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February 18, 2010

Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20024

**Re: Finance Docket No. 35352; *Petition of Nebkota Railway, Inc.*  
and *West Plains Company* for a Declaratory Order**

Dear Sir or Madam:

Enclosed for filing are the original and ten copies of Nebraska Northwestern's comments with respect to the captioned petition, including the verified statement of George LaPray.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael W. Blaszak".

Enclosure

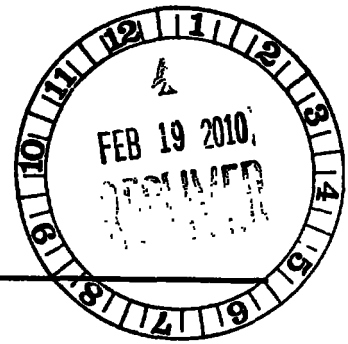
cc: Thomas F. McFarland  
Paul M. Donovan  
Terrence M. Hynes

ENTERED  
Office of Public Record

FEB 19 2010

Part of  
Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD



STB FINANCE DOCKET NO. 35352

PETITION OF NEBKOTA RAILWAY, INC.  
AND WEST PLAINS COMPANY  
FOR A DECLARATORY ORDER

ENTERED  
Office of Proceedings  
FEB 19 2010  
Part of  
Public Record

COMMENTS OF NEBRASKA NORTHWESTERN RAILROAD, INC.

Nebraska Northwestern Railroad, Inc. ("NNW"), by its undersigned counsel, hereby submits its comments regarding the Petition for a Declaratory Order filed by Nebkota Railway, Inc. ("Nebkota") and West Plains Company in this proceeding.

As stated in the Verified Notice of Exemption filed by NNW in Finance Docket No. 35346, NNW has reached agreement with Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") to purchase DM&E's rail line between Mile Post 404.5 near Chadron, Nebraska and Mile Post 411.72 Engineering Station 7492 +73 near Dakota Junction, Nebraska, and will lease and operate DM&E's rail line between the last-named point and Mile Post 432.6 near Crawford, Nebraska. The length of the purchased line segment is 7.22 miles, and the length of the leased line segment is 20.88 miles. The length of the rail line to be operated by NNW is 28.1 miles. NNW will be a Class III rail carrier upon consummation of these transactions after the exemption becomes effective. The rail line to be acquired connects with Nebkota at Chadron.

Nebkota and West Plains Company have filed a Joint Petition for Rejection and Stay of Class Exemption, and Supplement thereto, in Finance Docket No. 35346, to which NNW has replied. The Petition in this proceeding raises many of the same issues.

It is apparent from both the Joint Petition and the Petition in this proceeding that the primary concern of the petitioners is that NNW's creation would isolate Nebkota from its connection with DM&E. As NNW has stated in its reply to the Joint Petition, that will not happen. NNW and DM&E have agreed to relocate Nebkota's existing connection with DM&E from Chadron to Dakota Junction. Aside from this relocation of approximately four miles, consummation of the NNW transactions will have no effect on Nebkota. It will continue to enjoy trackage rights over the line NNW is acquiring through purchase and lease, and will continue to connect with both DM&E at Dakota Junction and BNSF Railway at Crawford (LaPray V.S., p. 3).

The Petition's speculation concerning NNW's motives is inaccurate. NNW is not purchasing and leasing the line for the purpose of "interjecting NNW into the middle of routings involving" Nebkota. Because Nebkota will be able to reach its existing connections by exercising its trackage rights over the line, just as it does today, NNW will have no power to participate in through movements involving Nebkota without Nebkota's consent. Moreover, NNW is taking all of the business and administrative steps required to provide common carrier railroad service over the line, including preparing tariffs, securing reporting marks and an accounting code from the Association of American Railroads, executing the Car Service, Car Hire and Mechanical Interchange Rules, arranging for TRAIN II reporting, and securing the use of a locomotive (LaPray V.S., p. 2). NNW will not be a "paper railroad."

The suggestion in the Petition that NNW is using the class exemption of 49 C.F.R. Part 1150, Sub-part D, Exempt Transactions "as a financial tool for the betterment of sharp investors rather than as a mechanism to maintain needed rail services" is puzzling in view of the claim made in the Petition that "[a]s early as 2005 . . . DM&E officials informed NRI and WPC that its long term plans would likely

include sale or abandonment of DM&E assets in and around Chadron, NE." If the purpose of the class exemption is to promote transactions that serve "shipper and community interests by continuing rail service, and [allow] the selling railroad to eliminate lines it cannot operate economically" (*Class Exemption for the Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810, 813 (1982)), it would be difficult to come up with a more appropriate paradigm than NNW's proposed acquisition and operation of this admittedly endangered line. Nebkota's complaint appears to be that DM&E selected NNW, and not Nebkota, as the line's purchaser, but the Board historically has concerned itself with the preservation of rail service, not the identity of the entity preserving it.

There is no need for a proceeding to modify the class exemption in a manner which protects existing short lines, or for conditions on such an exemption, based on these facts. The creation of NNW will have no effect on Nebkota's ability to serve its shippers. Nebkota will continue to have trackage rights over NNW's rail line, and its connections with DM&E and BNSF will remain intact. The Board should decline the Petition's invitation to reexamine its long-standing and successful policy of minimizing regulatory barriers to the acquisition of endangered rail lines by willing investors.

Respectfully submitted,

NEBRASKA NORTHWESTERN RAILROAD, INC.

By: \_\_\_\_\_

Michael W. Blaszak

211 South Leitch Avenue

La Grange, Illinois 60525-2162

(312) 373-6611

Dated: February 18, 2010

**CERTIFICATE OF SERVICE**

Michael W. Blaszak hereby certifies that on February 18, 2010 he served the foregoing  
COMMENTS OF NEBRASKA NORTHWESTERN RAILROAD, INC. TO PETITION FOR  
DECLARATORY ORDER on the following individuals, first class postage prepaid:

Thomas F. McFarland

Thomas F. McFarland, P.C.

208 South LaSalle Street, Suite 1890

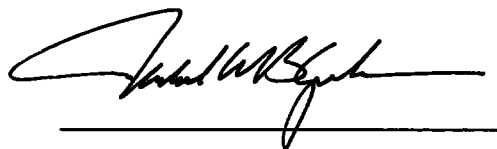
Chicago, Illinois 60604-1112

Paul M. Donovan

Laroe, Winn, Moerman & Donovan

1250 Connecticut Avenue, N.W.

Washington, D.C. 20036

A handwritten signature in black ink, appearing to read "Michael W. Blaszak", is written over a horizontal line.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 35352**

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**PETITION OF NEBKOTA RAILWAY, INC.  
AND WEST PLAINS COMPANY  
FOR A DECLARATORY ORDER**

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**VERIFIED STATEMENT OF  
GEORGE LA PRAY**

I am George LaPray, Manager Administration of Nebraska Northwestern Railroad, Inc. ("NNW"). I am submitting this verified statement in opposition to the Petition for a Declaratory Order filed by Nebkota Railway, Inc. ("Nebkota") and West Plains Company in the captioned proceeding.

NNW has negotiated several contracts with Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") for the purpose of providing freight railroad service between Chadron and Crawford, Nebraska. As stated in NNW's Verified Notice of Exemption in Finance Docket No. 35346, NNW will purchase DM&E's rail line between Mile Post 404.5 near Chadron, Nebraska and Mile Post 411.72 Engineering Station 7492 +73 near Dakota Junction, Nebraska, and will lease and operate DM&E's rail line between the last-named point and Mile Post 432.6 near Crawford, Nebraska, together with various side tracks, spur tracks, connections, and other facilities located therein. The length of the purchased line segment is 7.22 miles, and the length of the leased line segment is 20.88 miles. The length of the rail line

to be operated by NNW is 28.1 miles. NNW will be a Class III rail carrier upon consummation of these transactions after the exemption becomes effective.

The Petition makes these allegations concerning NNW's transactions:

. . . NNW will neither originate nor terminate any traffic on the rail lines to be purchased and leased, and has no relationship to any shipper or other entity that does originate or terminate traffic on those lines. Further, the acquisitions at issue are solely for the purpose of interjecting NNW involving NRI [Nebkota] and NRI's parent company WPC [West Plains Company] thereby permitting NNW to extract revenues or other premiums for performing no public transportation services.

None of these allegations is true.

NNW fully intends to become a common carrier railroad and provide rail transportation service to patrons. NNW has drafted a tariff which sets forth its terms of service and pricing, which will be made effective when the exemption becomes effective and its transactions with DM&E close. NNW has applied for and been assigned (on reserved basis pending the effectiveness of the exemption) reporting marks and an accounting code by the Association of American Railroads ("AAR"). NNW has become a signatory to the AAR's Car Service, Car Hire and Mechanical Interchange Rules. NNW is currently making arrangements with a vendor to provide AAR TRAIN II reporting services.

NNW will operate trains for its own account, as well as operating haulage trains for DM&E. NNW currently has available a locomotive which was purchased by one of NNW's principals and will be registered under NNW's marks in AAR's UMLER file when AAR changes those marks from pending to active.<sup>1</sup> NNW has made the required submissions for operating railroads to the Federal Railroad Administration. NNW will be a subscriber to the General Code of Operating Rules. NNW will hire operating employees and will ask to be ruled a "covered carrier" by the U.S. Railroad Retirement Board.

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<sup>1</sup> The locomotive is ex-Dakota Northern 303, originally Duluth, Missabe & Iron Range 303, an SD18 road switcher locomotive.

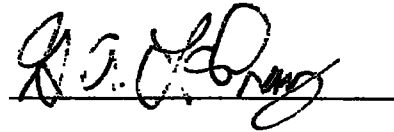
Nebkota's primary concern appears to be that NNW's creation would interfere with a 2008 haulage agreement between Nebkota and DM&E. That agreement will not be assigned to NNW, and NNW will have no control over its future. However, the contemplated transactions will not sever Nebkota's connection with DM&E. In its agreements with NNW, DM&E agreed that it "shall relocate its Rule 260 Interchange Junction with Nebkota Railway, Inc. ('NRI') from Chadron, NE to Dakota Junction, NE." Nebkota has the rights, under its Chadron-Crawford trackage rights agreement, which *will* be assigned to and will bind NNW, to operate trains over the Chadron-Dakota Junction line and to interchange traffic with DM&E at Dakota Junction. NNW, which will succeed DM&E as the owner of the Chadron-Dakota Junction line, will not interfere with Nebkota's exercise of those preexisting rights.

Thus, NNW will not have the power to "interject" itself between Nebkota and its current connections DM&E and BNSF Railway. Nebkota will be able to exercise its trackage rights over NNW's rail line and connect directly with both carriers, just as it does today.



# VERIFICATION

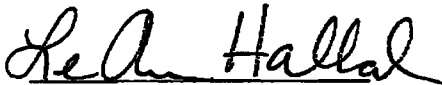
George La Pray, being first duly sworn, states that he is Manager Administration of Nebraska Northwestern Railroad, Inc., that he has read the foregoing statement, and that the same is true and correct to the best of his knowledge, information and belief.



SUBSCRIBED and SWORN

before me this 18th day of

February, 2010.



Notary Public

